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09/828,469	04/09/2001	Carlos A. Silva JR.	06975-125001	6757

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EXAMINER

SALTARELLI, DOMINIC D

ART UNIT PAPER NUMBER

2611

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/828,469

Applicant(s)

SILVA ET AL.

Examiner

Dominic D. Saltarelli

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed August 19, 2005 have been fully considered but they are not persuasive.

First applicant argues that Yen and Bournas fail to disclose the claimed limitation of "making an intelligent selection comprises selecting the selected context information based upon a hierarchy of the available context information" (applicant's remarks, page 7, 3<sup>rd</sup> paragraph). Applicant cites Yen as failing to disclose "selecting based upon a hierarchy" (applicant's remarks, page 8, 1<sup>st</sup> paragraph) and further cites Bournas as failing to disclose making an intelligent selection of context information (applicant's remarks, page 8, 2<sup>nd</sup> paragraph).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Second, applicant argues that there is no motivation to combine the teachings of Yen and Bournas, as the two references deal with divergent subject matter, and Yen does not teach a desire for more efficient searching of information.

In response, examiner must note that a reference which teaches a more efficient searching tool provides the motivation of improved efficiency for combination with the Yen reference, which performs dynamic searching of large amounts of data on an ongoing basis. Further, the references are not divergent, because, as noted above, the Yen reference relies heavily upon data searching algorithms, and Bournas discloses, on col. 4, lines 55-60 "Some of the examples described herein are based on routing mechanisms; however, the data structure and techniques of the present invention are not limited to a routing mechanism. They can be incorporated and used in various other situations that can take advantage of a searchable data structure that is ordered."

### ***Claim Objections***

2. Claim 28 is objected to because of the following informalities: On line 2, the phrase "associated with" is duplicated. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 2, 4, 5, 7, 10, 11, 13, and 17-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yen (5,991,799, of record) in view of Bournas et al. (6,061,679, of record) [Bournas].

Regarding claims 1 and 20, Yen discloses a method and computer program for providing content relevant to television programming (col. 8 line 66 – col. 9 line 12), the method comprising:

Determining television programming being viewed by a viewer at a particular time (the background element monitors currently viewed programming col. 12, lines 10-15)

Determining available context information associated with the television programming available for delivery to the viewer (col. 9, lines 49-63, wherein all available information items are 'crosslinked' with each other, col. 8, lines 57-65, which is how the system determines what context information is associated with television broadcasts, such as described in the example given in col. 8 line 66 – col. 9 line 12);

Making an intelligent selection from the available context information (col. 9, lines 13-35); and

Delivering the selected context information to the viewer (col. 11, lines 21-40).

Yen fails to disclose the intelligent selection comprises selecting the selected context information based upon a hierarchy of available context information.

In an analogous art, Bournas teaches a method for searching for desired data (col. 4, lines 45-60) based upon a predetermined hierarchy (col. 7, lines 15-36), for the benefit of a more efficient search method (col. 2, lines 52-59).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen to include selecting based upon a hierarchy, as taught by Bournas, for the benefit of more efficiently searching for contextual information.

Regarding claim 2, Yen and Bournas disclose the method of claim 1, wherein determining television programming being viewed comprises determining the television programming tuned to by a set top box (Yen, fig. 1, wherein the set top box is elements 110 and 120, col. 4, lines 14-22).

Regarding claim 4, Yen and Bournas disclose the method of claim 1, wherein determining context information associated with the television programming comprises determining context information based upon a television signal (Yen, such as a broadcast football game, col. 8 line 66 – col. 9 line 12) received by a set top box (Yen, fig. 1, wherein the set top box is elements 110 and 120, col. 4, lines 14-22).

Regarding claim 5, Yen and Bournas disclose the method of claim 1, wherein determining context information associated with the television

programming comprises determining context information based upon a channel identification number (Yen, col. 10, lines 40-49).

Regarding claim 7, Yen and Bournas disclose the method of claim 1, wherein determining context information associated with the television programming comprises determining context information based upon a television show (Yen, col. 8 line 66 – col. 9 line 12).

Regarding claim 10, Yen and Bournas disclose the method of claim 1, wherein determining context information associated with the television programming comprises determining context information based upon a program content category (Yen, users specify classes of content deemed interesting, col. 9 line 64 – col. 10 line 1).

Regarding claim 11, Yen and Bournas disclose the method of claim 1, wherein the hierarchy is predetermined (an inherent feature, because the search takes place utilizing the hierarchy data structure, as taught by Bournas, said hierarchy must be established prior to said search taking place).

Regarding claim 13, Yen and Bournas disclose the method of claim 11, wherein the hierarchy is determined by a television program (Yen, col. 8 line 66 – col. 9 line 12).

Regarding claim 17, Yen and Bournas disclose the method of claim 1, wherein the hierarchy is viewer selected (Yen, col. 9 line 49 – col. 10 line 4).

Regarding claim 18, Yen and Bournas disclose the method of claim 1, wherein the hierarchy is viewer selected, and thus dynamically determined (Yen, col. 9 line 49 – col. 10 line 4).

Regarding claim 19, Yen and Bournas disclose the method of claim 1, wherein delivering the selected context information to the viewer comprises displaying the context information by a set top box (Yen, fig. 1, wherein the set top box is elements 110 and 120, col. 4, lines 14-22).

Regarding claim 21, Yen and Bournas disclose the computer program of claim 20, but fails to disclose the computer readable medium is a disc.

The official notice taken that it is notoriously well known in the art to store computer programs on a disc, such as a hard disk drive, which provides a large amount of permanent storage on computer systems, was not traversed by the applicant, and is thus taken as an admission of the facts herein.

It would have been obvious at the time to a person of ordinary skill in the art to modify the computer program of Yen and Bournas to use a disc as a



computer readable medium, such as a hard disk drive, which provides large amounts of permanent storage for computer systems.

Regarding claim 22, Yen and Bournas disclose the computer program product of claim 20, wherein the computer readable medium is a client device (Yen, fig. 1, information multiplexer 120, which performs the intelligent selection of context information, col. 9, lines 13-35).

Regarding claim 23, Yen and Bournas disclose the computer program product of claim 20, but fails to disclose the computer readable medium is a host device.

The official notice taken that it is notoriously well known in the art to perform complex interactive computations at the headend of interactive television systems, simplifying the home units needed to connect to the system was not traversed by the applicant, and is thus taken as an admission of the facts herein.

It would have been obvious at the time to a person of ordinary skill in the art to modify the computer program product of Yen and Bournas such that the computer readable medium is a host device, for the benefit of reducing the complexity of home devices used by the system, thus lowering the cost of home units.

Regarding claim 24, Yen and Bournas disclose the computer program product of claim 20, wherein the computer readable medium is a propagated signal (an inherent feature, as any computer program must be a propagated signal in order to be utilized by the computer system in which it is disposed).

Regarding claim 25, Yen and Bournas disclose the method of claim 1, wherein the available context information comprises web pages (Yen, col. 8 line 66 – col. 9 line 12).

Regarding claim 26, Yen and Bournas disclose the method of claim 1, wherein the hierarchy of available context information comprises ranked categories of context information [hierarchy] associated with a television program being viewed by the viewer (Yen, col. 12, lines 10-15).

Regarding claim 27, Yen and Bournas disclose the method of claim 26, wherein the ranked categories comprise a name of the television program (Yen, col. 12, lines 20-29).

Regarding claim 28, Yen and Bournas disclose the method of claim 1, wherein the hierarchy of available context information comprises ranked categories of context information [hierarchy] associated with the viewer (Yen, col. 11 line 66 – col. 12 line 9).

Regarding claim 29, Yen and Bournas disclose the method of claim 28, wherein the ranked categories comprise the viewer's interests (Yen, col. 11 line 66 – col. 12 line 9).

5. Claims 3, 8, 9, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yen and Bournas as applied to claims 1 and 11 above, and further in view of Matthews, III. (5,654,748, of record) [Matthews].

Regarding claims 3 and 9, Yen and Bournas disclose the method of claim 1, but fails to disclose determining television programming being viewed comprises determining the television programming based upon an EPG identifier.

In an analogous art, Matthews teaches determining television programming being viewed based upon an EPG identifier (col. 5 line 65 – col. 6 line 13), for the benefit identifying programming in a simple manner.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method of Yen and Bournas to include determining television programming being viewed based upon an EPG identifier, as taught by Matthews, for the benefit of identifying programming in a simple manner, as other means would require special codes or information to be associated with programming ahead of time, which would be cumbersome and expensive for analog broadcasts.

Regarding claim 8, Yen and Bournas disclose the method of claim 1, but fails to disclose determining context information associated with the television programming comprises determining context information based upon an episode of a television show.

In an analogous art, Matthews teaches determining context information associated with the television programming based upon an episode of a television show (col. 7, lines 22-31), providing very specific additional information for viewers regarding viewed programming.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen and Bournas to include determining context information based upon an episode of a television show, as taught by Matthews, for the benefit of providing very specific additional information to viewers regarding individual episodes within a television series.

Regarding claim 12, Yen and Bournas disclose the method of claim 11, but fail to disclose the hierarchy is determined by an episode of a television program.

In an analogous art, Matthews teaches determining context information associated with the television programming based upon an episode of a television show (col. 7, lines 22-31), providing very specific additional information for viewers regarding viewed programming.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen and Bournas to include determining context information based upon an episode of a television show, as taught by Matthews, for the benefit of providing very specific additional information to viewers regarding individual episodes within a television series.

Regarding claim 15, Yen and Bournas teach the method of claim 11, but fail to disclose the hierarchy is determined by an EPG identifier.

In an analogous art, Matthews teaches determining television programming being viewed based upon an EPG identifier (col. 5 line 65 – col. 6 line 13) in order to locate additional information related to said program (col. 7, lines 22-31), for the benefit identifying programming in a simple manner.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method of Yen and Bournas to include determining television programming being viewed based upon an EPG identifier, as taught by Matthews, for the benefit of identifying programming in a simple manner, as other means would require special codes or information to be associated with programming ahead of time, which would be cumbersome and expensive for analog broadcasts.

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6. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yen and Bournas as applied to claims 1 and 11 above, and further in view of Feinleib (6,637,032, of record).

Regarding claim 6, Yen and Bournas disclose the method of claim 1, but fail to disclose determining context information associated with the television programming comprises determining context information based upon a broadcaster identifier.

In an analogous art, Feinleib teaches coordinating a television broadcast with supplemental content based upon the broadcaster of the television broadcast (the MSNBC cable broadcast is supplemented with posting on the MSNBC web site, col. 1, lines 43-51), providing the benefit of broadcaster specific supplemental content.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen and Bournas to include coordinating a television broadcast with supplemental content based upon the broadcaster of the television broadcast, as taught by Feinleib, for the benefit of providing broadcaster specific supplemental content, granting broadcasters a measure of control over what supplemental content is associated with their own broadcast programming.

Regarding claim 14, Yen and Bournas disclose the method of claim 11, but fail to disclose the hierarchy is determined by a broadcaster identifier.

In an analogous art, Feinleib teaches coordinating a television broadcast with supplemental content based upon the broadcaster of the television broadcast (the MSNBC cable broadcast is supplemented with posting on the MSNBC web site, col. 1, lines 43-51), providing the benefit of broadcaster specific supplemental content.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen and Bouras to include coordinating a television broadcast with supplemental content based upon the broadcaster of the television broadcast, as taught by Feinleib, for the benefit of providing broadcaster specific supplemental content, granting broadcasters a measure of control over what supplemental content is associated with their own broadcast programming.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yen and Bouras as applied to claim 11 above, and further in view of Matthews and Feinleib.

Regarding claim 16, Yen and Bouras disclose the method of claim 11, and additionally disclose selecting context information based upon a television program (such as a broadcast football game, shown in Yen, col. 8 line 66 – col. 9 line 12), and selecting context information based upon a content category (information classes, Yen, col. 9 line 64 – col. 10 line 1), wherein context information is intelligently selected based upon a predetermined hierarchy which first searches the most specific criteria and progressively traverses the hierarchy

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upwards using less specific criteria until context information is found (as taught by Bournas, col. 7, lines 15-36). Thus the combination of Yen and Bournas teaches searching for context information based upon the most specific criteria first, and if no context information is found, applying progressively broader criteria (the television program, and then simply a content category) until context information is found.

Yen and Bournas fail to disclose selecting context information based upon an episode of a television program and selecting context information based upon a broadcaster identifier.

In an analogous art, Matthews teaches determining context information associated with the television programming based upon an episode of a television show (col. 7, lines 22-31), providing very specific additional information for viewers regarding viewed programming.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen and Bournas to include determining context information based upon an episode of a television show, as taught by Matthews, for the benefit of providing very specific additional information to viewers regarding individual episodes within a television series.

Yen, Bournas, and Matthews fail to disclose selecting context information based upon a broadcaster identifier.

In an analogous art, Feinleib teaches coordinating a television broadcast with supplemental content based upon the broadcaster of the television



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broadcast (the MSNBC cable broadcast is supplemented with posting on the MSNBC web site, col. 1, lines 43-51), providing the benefit of broadcaster specific supplemental content.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Yen, Bournas, and Matthews to include coordinating a television broadcast with supplemental content based upon the broadcaster of the television broadcast, as taught by Feinleib, for the benefit of providing broadcaster specific supplemental content, granting broadcasters a measure of control over what supplemental content is associated with their own broadcast programming.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dominic Saltarelli  
Patent Examiner  
Art Unit 2611

DS



**HAITRAN**  
**PRIMARY EXAMINER**